

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

MAR 12 1990

Federal Communications Commission
Office of the Secretary

In Re

Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
(WARRENTON, GEORGIA)

TO: Chief,
Mass Media Bureau

RM 7954

PETITION FOR RECONSIDERATION

William P. Eaton, Jr. ("Eaton"), by counsel and pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. Section 1.429, hereby seeks reconsideration of the Mass Media Bureau's ("Bureau") return of Eaton's Petition for Rule Making ("Petition") seeking to amend Section 73.202(b) of the Commission's Rules, 47 C.F.R. Section 73.202(b), to allot new Channel 232A at Warrenton, Georgia. In support thereof the following is stated.

I. STATEMENT OF THE FACTS

1. On January 9, 1990, Eaton filed his Petition requesting the Commission to amend the FM Table of Allotments, Section 73.202(b) of the Rules, to allot Channel 232A to Warrenton, Georgia, as that community's second local transmission service. Channel 232A had become available for allotment at Warrenton on December 22, 1989, the effective date of the Commission's sub-

stitution of Channel 230C3 for Channel 232A at Martinez, Georgia. See Evans, Martinez and Warrenton, Georgia, Second Report and Order and Memorandum Opinion and Order, 4 FCC Rcd 7926 (MM Bur. 1989). Eaton included with his Petition an allocation study demonstrating that a Channel 232A Warrenton allotment would meet the minimum distance separation requirements to all authorized stations and allotments. The allocation study also did not show any proposed allotments in conflict with Channel 232A at Warrenton. See Attachment 1, a copy of Eaton's Petition.

2. By letter dated February 7, 1990, from Karl A. Kensinger, Chief, Allocations Branch, the Bureau returned Eaton's Petition, stating:

An engineering review of the proposal reveals that the site you proposed for Channel 232A at Warrenton, at coordinates 33-16-52 and 82-39-08, is short-spaced to a pending counterproposal in MM Docket No. 89-404, to add Channel 234A to Gibson, Georgia. The comment period in that proceeding expired November 16, 1989. Your proposal has not been timely filed for consideration in that proceeding.

See Attachment 2.

3. In MM Docket No. 89-404, the Commission proposed to substitute Channel 278C3 for Channel 278A at Greenwood, South Carolina, and to modify the license of station WMTY-FM at Greenwood to specify operation on the upgraded channel, in response to a Petition for Rule Making filed by United Community Enterprises, Inc. ("United"), licensee of Station WMTY-FM. Notice of Proposed Rule Making, 4 FCC Rcd 6943 (MM Bur. 1989)

("Notice"). On October 13, 1989, before the November 16, 1989, comment date established in the Notice, Heart of Dixie Broadcasting, Inc. ("Dixie") filed a Petition for Rule Making requesting the Commission to allot Channel 278A as a first local service to Gibson, Georgia. On November 3, 1989, the Commission gave Public Notice that it considered Dixie's Petition for Rule Making a counterproposal in Docket 89-404 and afforded parties 15 days to comment on Dixie's counterproposal. According to the Commission's records there were no other counterproposals filed in Docket 89-404. See Attachment 3, a copy of the Commission's computerized history of Docket 89-404 as of March 8, 1990. 1/

II. ARGUMENT

4. The Commission's records reveal that there is no tendered counterproposal in Docket 89-404 to allot Channel 234A to Gibson and to which Eaton's proposed Channel 232A allotment at Warrenton is short-spaced. In the absence of any evidence of a timely filed counterproposal in Docket 89-404 suggesting the allotment of Channel 234A at Gibson, there are only two possible

1/ In Reply Comments filed December 1, 1989, United submitted a new proposal to allot Channel 228A at Gibson with a site restriction of 10.46 kilometers southeast of the community, which would also require the Commission to substitute Channel 260A for Channel 228A at Sandersville, Georgia, which is assigned to WSNT-FM. United's counterproposal did not comply with Section 1.420(d) of the Commission's Rules, 47 C.F.R. Section 1.420(d), which provides that "[c]ounterproposals shall be advanced in initial comments only and will not be considered if they are advanced in reply comments."

conclusions: (1) the Bureau's February 7 letter returning Eaton's Petition was predicated on a mistake of fact, or (2) the Bureau, without giving notice to any party, has decided to consider on its own a possible Channel 234A allotment at Gibson. If the first conclusion applies, it is easily remedied by the Bureau accepting nunc pro tunc Eaton's Petition.

5. If the second conclusion applies, however, this represents conduct in violation of the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. Section 553, which requires the Commission to provide adequate notice and a fair opportunity for interested parties to participate and present relevant information in a rule making. At no time did the Commission give notice to Eaton or any other party that Docket 89-404 involved (1) the possible allotment of Channel 234A to Gibson or any other community which would foreclose a Channel 232A allotment at Warrenton, (2) any possible allotment that could foreseeably impact a Channel 232A allotment at Warrenton, or (3) any possible allotment that could preclude Warrenton from receiving its second local service.

6. The Bureau's consideration of a Channel 234A allotment at Gibson without giving notice and allowing for comment deprives Eaton of any opportunity to establish his position by way of comment or counterproposal. See Owensboro on the Air v. United States, 262 F.2d 702, 707, 709 (D.C. Cir. 1958). The essence of the Bureau's action is that it can preclude a potential new

broadcast service by considering an allotment proposal without notice, which forecloses interested parties from having any opportunity to comment on the contemplated action.

7. A Channel 234A allotment at Gibson does not conflict with the originally proposed Channel 278C3 upgrade at Greenwood, nor is it ancillary to, or implicit in the purpose or goal of the Docket 89-404 Notice. Compare Mt. Mansfield Television, Inc. v. FCC, 442 F.2d 470, 488 (2d Cir. 1971). The Docket 89-404 Notice contains no indication that the Bureau might contemplate an allotment on its own motion that would preclude consideration of a Channel 232A allotment at Warrenton. Similarly, at no time did the Commission or Bureau give notice that the Bureau might contemplate an allotment, the consideration of which would foreclose Warrenton from receiving a second local transmission service. See Reeder v. Federal Communications Commission, 865 F.2d 1298, 1304 (D.C. Cir. 1989). The original proposal in the Docket 89-404 Notice to substitute Channel 278C3 at Greenwood "was not, on its face, mutually exclusive" with Eaton's desire to allot Channel 232A at Warrenton, and Eaton had no notice that the Bureau might contemplate a proposal which would "permanently foreclose" his Warrenton proposal. See Reeder, at 1304.

8. There is no substantive or procedural Commission rule which permits the Bureau to preclude consideration of a Channel 232A allotment at Warrenton based on a contemplated, unannounced, non-public channel proposal. The Bureau's failure to adhere to

its statutory obligation to afford Eaton a meaningful opportunity for comment and participation is particularly egregious given the Commission's statutory obligation to distribute radio frequencies to provide a fair, efficient, and equitable distribution of radio service to the several states and communities. 47 U.S.C. Section 307(b). Allotting new channels at Warrenton (232A) and Gibson (278A) would provide a significantly greater public benefit than foreclosing a Warrenton allotment. See Revision of FM Assignment Policy and Procedures, 90 FCC2d 88 (1982); Andalusia, Alabama, 49 Fed. Reg. 32201, published August 13, 1984 (proposed channel upgrade does not provide as great a public benefit as that of a new primary service). The Commission's unannounced Gibson proposal would foreclose a new service at Warrenton in apparent favor of an upgrade at Greenwood, in direct contravention of established Commission allocation policies. 2/ Basic fairness requires the Commission to conduct rule making proceedings involving new channel allotments in the open. Sangamon Valley Television Corp. v. U.S., 269 F.2d 221, 224 (D.C. Cir. 1959). The Bureau's decision to preclude a new Warrenton allotment based on its own non-public "counterproposal" does not meet this requirement, or the Commission's statutory obligations under the Communications Act and the Administrative Procedure Act.

2/ It would also foreclose an upgrade of service which Station WAAW-FM, Williston, South Carolina, has pending (see discussion infra).

9. While Eaton would acknowledge that the Commission (or Bureau) has some latitude to adopt alternate channel allotments to accommodate conflicting proposals in an allotment proceeding, that latitude is not boundless, and must fall within the confines of the Administrative Procedure Act's fair notice and comment requirements. The Bureau's contemplation of a Channel 234A allotment at Gibson without notice, its reliance on this possibility as the predicate for refusing to even consider Eaton's proposal for a new service at Warrenton, and its return of Eaton's Petition fall outside any legitimate bounds of such latitude. The Bureau cannot dismiss Eaton's Warrenton proposal when it provided no notice of its own conflicting proposal for Channel 234A at Gibson. See Ponte Vedra Beach, Florida, 4 FCC Rcd 843 (MM Bur. 1989).

10. Finally, the Bureau's contemplated Channel 234A Gibson allotment conflicts with an upgrade which FM station WAAW, Williston, South Carolina, has applied for on Channel 234A. Consistent with the Commission's Second Report and Order in Amendment of Part 73 of the Rules to Provide for an Additional FM Station Class (Class C3) and to Increase the Maximum Transmitting Power for Class A FM Stations, 4 FCC Rcd 6375, (1989) ("Second Report and Order"), on October 2, 1989, Bay Communications, Inc., licensee of WAAW, filed an application to relocate the WAAW transmitter site to permit it to upgrade to 6 kilowatts effective radiated power. Not only is the Bureau's contemplated proposal

in conflict with the WAAW upgrade, but as demonstrated in the attached statement of Eaton's technical consultant, it would preclude WAAW from relocating its transmitter site to a location which would permit it to upgrade to 6 kilowatts. See Attachment 4.

11. The Commission recognized the significant public interest benefits that would result if Class A stations could increase power to 6 kilowatts, improving their ability to serve the public and making them technically and economically more competitive. Second Report and Order, supra. While not necessarily of the same magnitude, they are similar to the benefits attributable to Class A stations upgrading to Class C3, such as United proposes in Docket 89-404. See Amendment of Part 73 of the Rules to Provide for an Additional FM Station Class (Class C3) and to Increase the Maximum Transmitting Power for Class A FM Stations, 4 FCC Rcd 2792 (1989) (First Report and Order). WAAW filed its upgrade proposal more than a month before the date for comments and counterproposals in Docket 89-404. The Bureau's contemplated Channel 234A allotment at Gibson would abrogate the public interest benefits that WAAW's upgrade offers, and the policy objectives underlying the Second Report and Order.

12. In sum, without giving any notice of its intentions, the Bureau has contemplated an inferior allotment scheme in Docket 89-404 that would foreclose a new service at Warrenton and an upgrade for WAAW. But for the Bureau's secret "counterpro-

posal" the Commission could allot new channels at both Gibson and Warrenton, and permit WAAW to upgrade. Instead, the Bureau returned Eaton's Petition, apparently deciding to foreclose without consideration a second local service at Warrenton and an upgrade for WAAW in favor of an upgrade for WMTY at Greenwood. The Bureau's action has denied Eaton notice and a meaningful opportunity for comment in direct contravention of the Commission's statutory obligations under the Administrative Procedure Act.

WHEREFORE, for the foregoing reasons, the Bureau is respectfully requested to reconsider its action returning Eaton's Petition, and to accept the Petition nunc pro tunc.

Respectfully submitted,

WILLIAM P. EATON

By:


John E. Fiorini III
Mark Van Bergh

GARDNER, CARTON & DOUGLAS
1001 Pennsylvania Ave., N.W.
Suite 750
Washington, D.C. 20004
(202) 347-9200

DATED: March 12, 1990

William P. Eaton, Jr.
Warrenton, Georgia

ATTACHMENT 1

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re:)
)
Amendment of Section 73.202(b)) RM-_____
Table of Allotments,)
FM Broadcast Stations)
)
(Warrenton, Georgia))

To: Chief, Allocations Branch
Mass Media Bureau

Petition for Rule Making

William P. Eaton, Jr. (Eaton), hereby petitions the
Commission to amend Section 73.202(b) of its rules as follows:

	<u>Present</u>	<u>Proposed</u>
Warrenton, Georgia	226A	226A, 232A


Attached hereto is an Engineering Statement of Moffet,
Larson & Johnson, Inc., which demonstrates that Channel 232A
may be allotted to Warrenton, Georgia, in compliance with all
applicable allocation rules.

If the requested allotment is made, Eaton will file an
application for a construction permit to construct an FM

station on such channel, and upon grant of such application
Eaton will construct and operate such station.

Respectfully submitted,

WILLIAM P. EATON, JR.



John E. Florini III
Gardner, Carton & Douglas
1001 Pennsylvania Avenue, N.W.
Suite 750
Washington, D.C. 20004
(202) 879-9459

January 9, 1990

His Attorney

ENGINEERING REPORT
MOFFET, LARSON & JOHNSON, INC.

5203 LEESBURG PIKE

CONSULTING TELECOMMUNICATIONS ENGINEERS

FALLS CHURCH, VA 22041

ENGINEERING STATEMENT
PREPARED ON BEHALF OF
WILLIAM P. EATON, JR.
IN SUPPORT OF RULEMAKING
TO ALLOT
FM CHANNEL 232A
TO
WARRENTON, GEORGIA

December 29, 1989

ENGINEERING REPORT

MOFFET, LARSON & JOHNSON, INC.

5203 LEESEBURG PIKE

CONSULTING TELECOMMUNICATIONS ENGINEERS

FALLS CHURCH, VA 22041

William P. Eaton, Jr.
Warrenton, Georgia

ENGINEERING STATEMENT

This Engineering Statement has been prepared on behalf of William P. Eaton, Jr., proposing the allotment of FM Channel 232 Class A to Warrenton, Georgia as the community's second primary FM station.

Exhibit 1, attached, is an allotment study for FM Channel 232A as determined for a site located at North Latitude 33° 16' 52"; West Longitude 82° 39' 08". This geographical location is located 14.0 kilometers south of the center of Warrenton, Georgia and can be used as the reference location for the proposed allotment. Exhibit 1 demonstrates that a site located at the reference location will meet the necessary FM separation requirements to all existing, authorized and proposed FM facilities pursuant to 47 C.F.R. 73.207, with the exception of the licensed FM station WMTZ, Martinez, Georgia, 232A. WMTZ has, however, been authorized to have FM Channel 230C3 substituted for Channel ~~230A~~, 232A effective on December 22, 1989 by MM Docket No. 88-51, Second Report and Order and Memorandum Opinion and Order, released November 7, 1989. The Martinez allotment for FM Channel 230C3 is also shown on Exhibit 1.

Exhibit 2, is a map showing the available site selection area for FM Channel 232A, as well as the reference site location. Also shown on Exhibit 2 is the 3.16 mV/m F(50,50) service contour as determined for a maximum Class A FM facility located at the reference location using the methods described in 47 C.F.R. 73.313. As demonstrated by Exhibit 2, this service contour will adequately serve the Warrenton Community in compliance with 47 C.F.R. 73.315(a).

Moffet, Larson, & Johnson, Inc.

Page: 1 of 1
Date: 12/28/89

Study Name : WARRENTON, GEORGIA
Channel : 232A
Coordinates : N 33 16 52 W 82 39 8
Separations : FM Zone 2 - Commercial

Call	City	&	State	Stat	File - number	Chan	ERP	HAAT	Zn	Latitude	Longitude	Bear	Dist	Req'd	Clear	Notes
													--- kilometers ---			
	JEFFERSONVILLE		GA	ALC		229A			2	32 39 28.0	83 22 55.0	224.7	97.12	31.0	66.12	
WMTZ	MARTINEZ		GA	ALC		230C3			2	33 30 .0	82 16 57.0	54.6	42.10	42.0	.10	CLOSE
WCHYFM	SAVANNAH		GA	LIC	BLH 7490	231C	100	1320	2	32 3 14.0	81 21 1.0	137.9	182.86	165.0	17.86	
WSTRFM	SMYRNA		GA	LIC	BLH 801113AE	231C1	100	914	2	33 45 34.0	84 23 19.0	288.8	169.82	133.0	36.82	
WSTRFM	SMYRNA		GA	CP	BPH 870227NN	231C	100	1022	2	33 45 35.0	84 20 7.0	289.3	165.13	165.0	.13	CLOSE
WMTZ	MARTINEZ		GA	LIC	BLH 830609AE	232A	3.00	300	2	33 26 17.0	82 5 19.0	71.4	55.27	115.0	-59.73	SHORT
WBYZ	BAXLEY		GA	LIC	BLH 880719KA	233C	100	1014	2	31 47 10.0	82 27 3.0	173.5	166.86	165.0	1.86	CLOSE
WMUUFM	GREENVILLE		SC	LIC	BLH 6867	233C	100	1200	2	34 56 29.0	82 24 41.0	6.8	185.50	165.0	20.50	
WAAW	WILLISTON		SC	APP	BMPH 891002IK	234A	2.11	560	2	33 28 33.0	81 32 57.0	77.8	104.89	31.0	73.89	
WPCH	ATLANTA		GA	LIC	BLH 880106KA	235C	99.0	983	2	33 48 27.0	84 20 26.0	291.0	167.32	95.0	72.32	
WMKO	MILLEN		GA	CP	BPH 880616MD	235A	2.00	400	2	32 43 52.0	81 51 40.0	129.4	95.84	31.0	64.84	

EXHIBIT 1

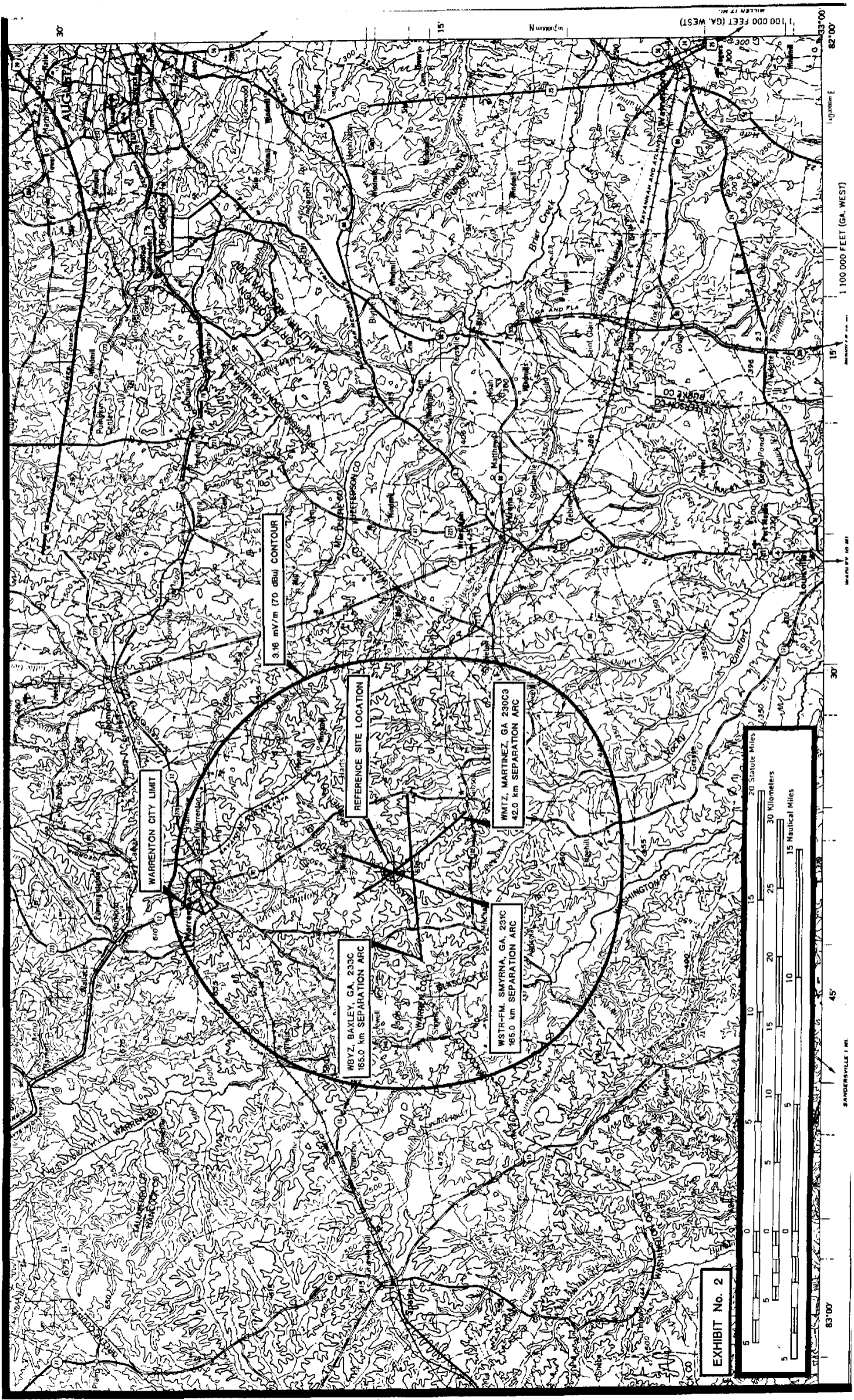


EXHIBIT No. 2

ENGINEERING REPORT

MOFFET, LARSON & JOHNSON, INC.

6203 LEEBURG PIKE

CONSULTING TELECOMMUNICATIONS ENGINEERS

FALLS CHURCH, VA 22041

William P. Eaton, Jr.
Warrenton, Georgia

A F F I D A V I T

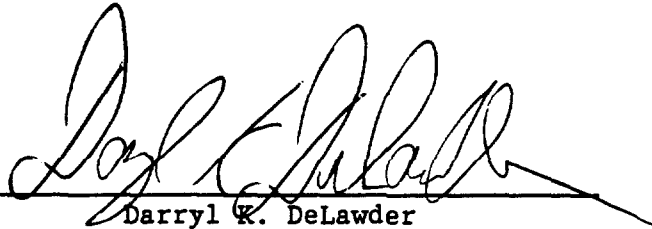
COUNTY OF FAIRFAX)
) SS:
COMMONWEALTH OF VIRGINIA)

DARRYL K. DELAWDER, being duly sworn upon oath deposes and says:

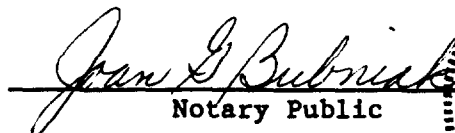
That he has a Bachelor of Science degree in electrical engineering from Villanova University and is certified as an Engineer-in-Training in the Commonwealth of Pennsylvania and is employed as a senior engineer by the firm of Moffet, Larson & Johnson, Inc., consulting telecommunications engineers;

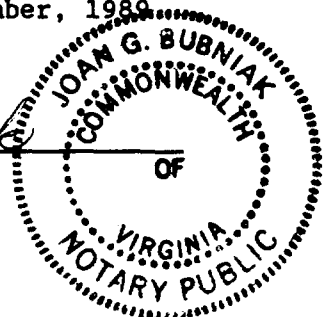
That this firm has been retained by William P. Eaton, Jr. to prepare this engineering statement;

That he has either prepared or directly supervised the preparation of all technical information contained in this engineering statement; and that the facts stated in this engineering statement are true of his knowledge, except as to such statements as are herein stated to be on information and belief, and as to such statements he believes them to be true.


Darryl K. DeLawder

Subscribed and sworn to before me this 29th day of December, 1989


Notary Public



My Commission expires June 13, 1993.

ENGINEERING REPORT

MOFFET, LARSON & JOHNSON, INC.

6203 LEESBURG PIKE

CONSULTING TELECOMMUNICATIONS ENGINEERS

FALLS CHURCH, VA 22041

William P. Eaton, Jr.
Warrenton, Georgia

A F F I D A V I T

COUNTY OF FAIRFAX)
) SS:
COMMONWEALTH OF VIRGINIA)

WALLACE E. JOHNSON, being duly sworn upon oath deposes and says:

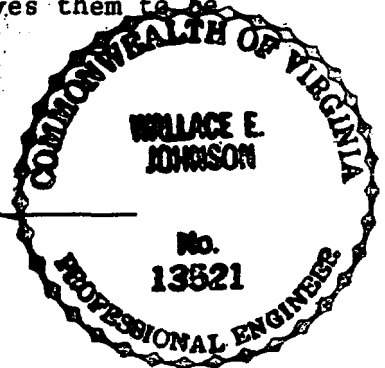
That his qualifications are a matter of record with the Federal Communications Commission;

That he is a registered professional engineer in the Commonwealth of Virginia and the District of Columbia and is the President of the firm of Moffet, Larson & Johnson, Inc.;

That this firm has been retained by William P. Eaton, Jr. to prepare this engineering statement;

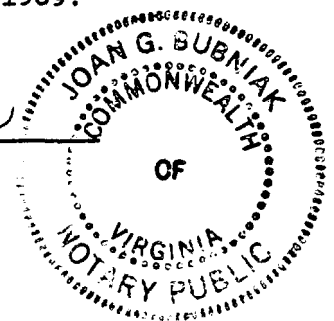
That he has either prepared or directly supervised the preparation of all technical information contained in this engineering statement; and that the facts stated in this engineering statement are true of his knowledge, except as to such statements as are herein stated to be on information and belief, and as to such statements he believes them to be true.

Wallace E. Johnson
Wallace E. Johnson



Subscribed and sworn to before me this 29th day of December, 1989.

Joan G. Bubniak
Notary Public



My Commission expires June 13, 1993.

William P. Eaton, Jr.
Warrenton, Georgia

ATTACHMENT 2

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEB 17 1990

IN REPLY REFER TO:

John E. Fiorini, III
Gardner, Carton & Douglas
1001 Pennsylvania Avenue, N.W.
Suite 750
Washington, D.C. 20004

Dear Mr. Fiorini:

This is in response to the petition for rule making which you submitted on January 9, 1990, on behalf of William P. Eaton, Jr., requesting the allotment of Channel 232A to Warrenton, Georgia, as a second local FM service.

An engineering review of the proposal reveals that the site you proposed for Channel 232A at Warrenton, at coordinates 33-16-52 and 82-39-08, is short-spaced to a pending counterproposal in MM Docket No. 89-404, to add Channel 234A to Gibson, Georgia. The comment period in that proceeding expired November 16, 1989. Your proposal has not been timely filed for consideration in that proceeding.

Based on the above information, we find that your petition for rule making is unacceptable for consideration and all copies are herewith returned.

Sincerely,



Karl A. Kensinger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

William P. Eaton, Jr.
Warrenton, Georgia

ATTACHMENT 3

8/24/89 NOTICE OF PROPOSED RULE MAKING adopted by Chief, Allocations
Branch directing that interested parties may file comments on or
before 11/16/89, and reply comments on or before 12/01/89; and for
further information contact Leslie K. Shapiro, MM Bureau, (202)
634-6530. (DA 89-1113) Rel. 09/22/89 weg

0/13/89 Petn. for rulemaking filed by Toni T. Rinehart, Heart of Dixie
Broadcasting, Inc. fmy (Treated as a counter proposal and
assigned RM-7133, Public Notice 11/03/89, Report No. 1800). fmy

0/18/89 Comments filed by Lawrence J. Bernard, Jr., attorney
UNITED COMMUNITY ENTERPRISES, INC. weg

1/20/89 Comments filed by Robert J. Rini, attorney
THOMAS COLE. weg

1/20/89 Reply Comments filed by Toni T. Rinehart, President
HEART OF DIXIE BROADCASTING, INC. weg
11/21/89 Errata filed changing the party represented to:
THOMAS COLE. weg

2/01/89 Reply Comments filed by Lawrence J. Bernard, Jr., attorney
UNITED COMMUNITY ENTERPRISES, INC. weg

William P. Eaton, Jr.
Warrenton, Georgia

ATTACHMENT 4

ENGINEERING REPORT
MOFFET, LARSON & JOHNSON, INC.

ORIGINAL

5203 LEESBURG PIKE

CONSULTING TELECOMMUNICATIONS ENGINEERS

FALLS CHURCH, VA 22041

William P. Eaton
Warrenton, Georgia

ENGINEERING STATEMENT

This Engineering Statement has been prepared on behalf of William P. Eaton, Jr. ("Eaton") whose proposal to add the FM allotment of Channel 232A at Warrenton, Georgia has been dismissed by the Commission. The Eaton proposal was dismissed because it is mutually exclusive, and not timely submitted, with the Bureau's own apparent proposal to substitute FM Channel 234A for Channel 278A at Gibson, Georgia. The allotment of Channel 234A at Gibson, Georgia is, however, mutually exclusive with the application by Bay Communications, Inc., permittee of WAAW(FM), Williston, South Carolina, 234A, to increase its facilities to the equivalent of six kilowatts effective radiated power and 100 meters antenna height above average terrain (FCC File No. BMPH-891002IK). This Engineering Statement has been prepared to show the impact of the proposal to allot Gibson, Georgia, 234A on WAAW's "6 kilowatt equivalent" proposal.

BMPH-891002IK proposes a site located at North Latitude 33° 28' 33"; West Longitude 81° 32' 57". Table 1, attached, is the results of an allocation study for FM Channel 234A from a transmitter site located at these coordinates, using the FM distance separation requirements of Paragraph 73.207 of the Commission's Rules. Table 1 demonstrates that BMPH-891002IK proposes a site that is short-spaced to the Gibson, Georgia, 234A counterproposal by 7.13 kilometers.

ENGINEERING REPORT

MOFFET, LARSON & JOHNSON, INC.

5203 LEESBURG PIKE

CONSULTING TELECOMMUNICATIONS ENGINEERS

FALLS CHURCH, VA 22041

William P. Eaton
Warrenton, Georgia

Map 1, attached, shows the separation requirements for the Williston, South Carolina, 234A FM allotment when the new separation requirements of Paragraph 73.207 are used. It is apparent from Map 1 that the Gibson, Georgia, 234A counterproposal, in conjunction with the allocation at Sumter, South Carolina, 234A, the proposal to allot Bowman, South Carolina, 233A (Docket No. 88-145) and the upgrade proposal (Docket No. D89-586) at Millen, Georgia, 235C3, will eliminate the area available for a WAAW(FM)-FM transmitter location that meets the "6 kilowatt equivalent" separation requirements of Paragraph 73.202 of the FCC Rules.

In conclusion, the allotment of Gibson, Georgia, 234A, will be mutually exclusive with the proposal by Bay Communications, Inc. to increase the facilities of WAAW to the new "6 kilowatt equivalent" power as allowed by the Commission's Rules. Furthermore, the allotment of Gibson, Georgia, 234A, will effectively eliminate any site area in which WAAW can locate a transmitter site that meets the separation requirements of Paragraph 73.207 of the Commission's Rules. This is shown by Table 1 and Map 1 of this Engineering Statement.